

ENCLOSURE C

SPECIAL CONDITIONS

I. Basis for Requiring Special Conditions

Background: On March 16, 1998, the U.S. Department of Education (Department) and DCPS entered into a Compliance Agreement pursuant to section 457 of the General Education Provisions Act. See 20 U.S.C. 1234f. DCPS achieved compliance in five of the eleven areas identified in the Compliance Agreement. The six remaining areas of noncompliance were included in DCPS's FFY 2001 Special Conditions set forth in Enclosure C attached to DCPS's November 6, 2001 grant award letter. Four areas of noncompliance remaining from the Compliance Agreement and a fifth area of noncompliance concerning the requirements to administer and report on alternate assessments were included in DCPS's FFY 2002 Special Conditions set forth in Enclosure C attached to DCPS's July 25, 2002 grant award letter.

Current Status: OSEP has determined that DCPS remains out of compliance in four of the five areas identified in the FFY 2002 Special Conditions grant award letter. The basis for reaching this determination is as follows.

1. Initial Evaluations and Reevaluations

- (a) An initial evaluation that meets the requirements of sections 614(a)(1), (b), and (c) of Part B of IDEA must be completed for all children with disabilities, and an appropriate placement must be made within the maximum number of days established by DCPS's policy. According to data submitted by DCPS under the FFY 2002 Special Conditions, DCPS had not achieved the goal of ensuring that all initial evaluations were completed and placements made in a timely manner. At the end of the final reporting period, 157 initial evaluations and placements had not been completed in a timely manner.
- (b) A reevaluation that meets the requirements of sections 614(a)(2), (b), and (c) of Part B of IDEA must be completed for all children with disabilities no later than 36 months after the date on which the most previous evaluation or reevaluation was completed. According to data submitted by DCPS under the FFY 2002 Special Conditions, DCPS had not achieved the goal of ensuring that all reevaluations of children with disabilities were conducted in a timely manner. At the end of the final reporting period, 294 reevaluations had not been conducted in a timely manner.

2. Implementation of Due Process Hearing Decisions

Independent hearing officer determinations must be implemented within the time-frame prescribed by the hearing determination, or if there is no time-frame prescribed by the hearing officer, within a reasonable time-frame set by DCPS. as required by sections 615 (f)

and (i) of Part B of IDEA. According to data submitted by DCPS under the FFY 2002 Special Conditions, DCPS had not achieved the goal of ensuring that all due process hearing decisions were implemented in a timely manner. At the end of the final reporting period under the FFY 2002 Special Conditions, 1,186 hearing decisions had not been implemented in a timely manner.

DCPS has stated that it is not confident in the data being reported and that the 1,186 number is not an accurate figure. DCPS is working with OSEP to identify methods for reporting accurately the information OSEP requires. DCPS must ensure that it is only reporting to OSEP the number of decisions that have not been implemented within a time-frame set by the hearing officer or, if there is no time-frame set by the hearing officer, within a reasonable time-frame established by DCPS. Based on discussions with DCPS, it appears that rather than reporting only on the number of hearing officer determinations that were not implemented within the required time-frame, DCPS may have included some hearing officer decisions which were still open because implementation had not been completed. Including hearing officer decisions that are open but are in fact being implemented may be contributing to the increasingly high number of decisions DCPS reports as not being implemented in a timely manner.

Another factor contributing to the inaccurate data may have been that DCPS was not establishing a reasonable timeframe for implementation for those decisions for which there was no hearing officer established time-frame. In order to address this problem, DCPS is establishing procedures to set a reasonable timeline for those decisions which do not have a hearing officer established time-frame for implementation. In addition, DCPS may have been inaccurately reporting decisions with multiple time-frames. If a decision has multiple time-frames, DCPS should only report those decisions as not being implemented if DCPS does not complete a required action within the established time-frame for that action. DCPS is currently reviewing how it is entering information in its Special Education Tracking System (SETS) to ensure that in the future it will report only those hearing officer determinations that are not being implemented within the required time-frame.

3. Placement in the Least Restrictive Environment

All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B of IDEA and 34 CFR §§300.550-300.556. During its March 26, 2001 compliance monitoring review of DCPS, OSEP collected data to determine whether DCPS was ensuring that all children with disabilities were placed in the least restrictive environment. OSEP determined that children with disabilities are removed from the regular educational environment for reasons other than that the nature or severity of the disability, even with the use of supplementary aids and services, is such that education in regular classes cannot be achieved satisfactorily. Personnel reported that placement decisions were affected by the lack of modifications and accommodations available in the regular class and the limited capacity of DCPS to serve

children with disabilities along each point of the continuum of alternative placements. OSEP found that DCPS was not ensuring that children with disabilities are placed in the least restrictive environment appropriate to their individual needs. DCPS has acknowledged that it has not achieved the goal of ensuring that all children with disabilities are placed in the least restrictive environment appropriate to their individual needs.

An error in data reporting was identified during the fourth quarter of the FFY 2002 Special Conditions. DCPS has been reporting intensities of service (amounts of service received) by students rather than the environments in which services are being provided. It is unknown at this time what difference this will make in the placement patterns identified in both the December 1 Child Count information and the Special Conditions reports. DCPS is correcting this reporting error and information provided to OSEP as part of the December 1, 2003 child count will reflect this correction. This will establish a new baseline from which to determine DCPS's progress in making placements determinations based on least restrictive environment procedures and individual student needs rather than on other factors.

4. Alternate Assessments

The requirements that States ensure that children with disabilities participate in State and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State and district-wide assessments are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(16)-(17); 34 CFR §§300.137-300.139. The requirements regarding performance goals and indicators and the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the requirements regarding reporting on alternate assessments have been in effect since July 1, 2000. According to the information reported to the Department in the District's Biennial Performance Report for the 2000-2001 school year, the District was not administering alternate assessments to all children with disabilities who could not participate in the District-wide assessment program, and was not reporting publicly, and to the Secretary, on the participation and performance of children with disabilities on alternate assessments as required by Part B of the Individuals with Disabilities Education Act (IDEA).

Therefore, the Department determined that the District had not complied with all the terms and conditions of the Federal Fiscal year 2001 awards under Part B of IDEA, and under the authority of the Education Department General Administrative Regulations, 34 CFR §80.12, the Department imposed an additional Special Condition on the District's Federal Fiscal Year 2002 awards under Part B of the IDEA. Those Special Conditions required that the District demonstrate, by May 30, 2003 that it was administering alternate assessments to all children with disabilities who could not participate in District-wide assessments and reporting publicly and to the Secretary on the participation and performance of children with

disabilities in alternate assessments, as required by 20 U.S.C. 1412(a)(16)-(17) and 34 CFR §§300.137-139.

DCPS administered alternate assessments to all children with disabilities who could not participate in the District-wide assessment program in the spring of 2003. Participation and performance data for children with disabilities on the 2002 pilot alternate assessment was reported to the Secretary as part of DCPS's fourth-quarter Special Conditions report on June 13, 2003. DCPS received the results of the 2003 alternate assessment on September 3, 2003 and has not yet reported either the results of the regular District-wide assessment or the alternate assessment to the public. DCPS will report alternate assessment participation and performance to the Secretary and to the public when the District-wide assessment information is reported to the public.

II. Nature of the Special Conditions

The following Special Conditions are imposed on the District of Columbia Public Schools' (DCPS's) Part B grant awards for FFY 2003:

A. Initial Evaluations and Reevaluations

1. DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:

(a) Initial Evaluations

For each reporting period include:

- (a) The children who, as of the end of the previous reporting period, had been referred for, but not provided a timely initial evaluation and placement;
- (b) The number of children referred for initial evaluation and placement whose initial evaluation and placement became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who were provided initial evaluations and placements during the reporting period;
- (d) The number of children who had not been provided a timely initial evaluations and placements at the conclusion of the reporting period; and
- (e) The percentage of timely initial evaluations and placements provided during the reporting period.

(b) Reevaluations

For each reporting period include:

- (a) The children who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation;

- (b) The number of children whose triennial reevaluation became overdue during the reporting period;
 - (c) The number of children, from (a) and (b) above, who had been provided triennial reevaluations during the reporting period;
 - (d) The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period; and
 - (e) The percentage of timely triennial reevaluations provided during the reporting period.
2. For each reporting period, if there is no progress in reducing the number of overdue initial evaluations and placements or triennial reevaluations, DCPS must provide an explanation for this lack of progress and identify procedures to be implemented to reduce the number of overdue initial evaluations and placements and/or reevaluations.
 3. For the each reporting period, DCPS must report the average number of days the initial evaluation and placements and reevaluations that had not been provided in a timely manner were overdue for that reporting period.

B. Implementation of Due Process Hearing Decisions

1. By the end of the first reporting period, DCPS must report to OSEP on the procedures it uses to ensure that DCPS (1) establishes a reasonable time-frame for implementation of hearing officer decisions that do not have a time-frame for implementation prescribed by the hearing officer and (2) tracks implementation of these decisions. In addition, DCPS must report on procedures it uses to ensure that the data reported to OSEP includes only the number of hearing officer determinations that have not been implemented within the required time-frame set by the hearing officer or DCPS.
2. For those hearing officer decisions that include a time-frame for implementation prescribed by the hearing officer, DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:
 - (a) The number of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the time-frame prescribed by the hearing officer;
 - (b) The number of children whose hearing officer determinations had not been implemented within the time-frame prescribed by the hearing officer (became overdue) during the reporting period;
 - (c) The number of children from (a) and (b) above whose hearing officer determinations were implemented during the reporting period;
 - (d) The number of children whose hearing officer determinations had not been implemented in a timely manner at the conclusion of the reporting period; and
 - (e) The percentage of hearing officer determinations that had been implemented in a timely manner during the reporting period.

3. For those hearing officer decisions that do not include a time- frame for implementation prescribed by the hearing officer, DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:
 - (a) The number of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the time-frame established by DCPS;
 - (b) The number of children whose hearing officer determinations were not implemented within the time-frame established by DCPS (became overdue) during the reporting period;
 - (c) The number of children from (a) and (b) above whose hearing officer determinations were implemented during the reporting period;
 - (d) The number of children whose hearing officer determinations had not been implemented in a timely manner at the conclusion of the reporting period; and
 - (e) The percentage of hearing officer determinations that had been implemented in a timely manner during the reporting period.
4. For each reporting period, DCPS must report to OSEP any remaining barriers to the timely implementation of hearing officer decisions (those with a time frame set by the hearing officer and those without a time-frame set by the hearing officer) and the steps being taken to remove those barriers.

C. Least Restrictive Environment

1. As part of the first quarterly report, DCPS must describe the steps it will take to ensure that children with disabilities are not removed from the regular classroom (removed from regular class more than 21% of the school day) based on factors other than the individual needs of the child and to decrease the numbers of children with disabilities removed from the regular educational environment to only those children for whom the nature and severity of their disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This includes describing any training DCPS conducts regarding the use of supplementary aids and services, modifications and accommodations to meet the needs of children with disabilities in the regular class.

2. As part of the first quarterly report, DCPS must describe to OSEP its progress in developing new inclusive programs, or expanding existing inclusive programs, to meet the needs of children with disabilities.
3. As part of the first quarterly report, DCPS must provide OSEP with a list of newly-created preschool options for children with disabilities. In addition, DCPS must provide OSEP with the numbers of children who are identified as needing special education and related services under Part B of IDEA and are placed in appropriate preschool programs, by DCPS after age three, or by DC Early Intervention Program before age three.
4. As part of the first quarterly report, DCPS must describe the monitoring activities it is carrying out in accordance with 34 CFR §300.556 to ensure that when DCPS places children with disabilities, those children are removed from the regular educational environment only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The monitoring activities should include interviewing members of the placement team and reviewing the individualized education programs (IEPs) of children with disabilities who do not participate for all, or part of, the day in the regular class in order to determine if these placement decisions were made consistent with the requirements in 34 CFR §§300.550-300.556. As part of the final quarterly report, DCPS must submit the results of the monitoring activities it has undertaken.
5. On a quarterly basis as outlined below, DCPS must report the placement patterns by disability and educational environment of children with disabilities by elementary, middle/junior and high schools.
6. On a quarterly basis as outlined below, DCPS must report on the actions it is taking and its progress in collecting accurate placement data.

DUE DATES AND REPORTING PERIODS FOR QUARTERLY REPORTS UNDER A-C THAT DCPS MUST SUBMIT TO THE U.S. DEPARTMENT OF EDUCATION

DATES OF REPORTING PERIODS	DATE OF DCPS REPORT TO THE U.S. DEPARTMENT OF EDUCATION
June 1 – September 30, 2003	October 31, 2003
October 1 – December 31, 2003	January 16, 2004
January 1 – March 31, 2004	April 16, 2004
April 1 – May 31, 2004	June 11, 2004

D. Reporting on Alternate Assessments

By August 31, 2003, DCPS must demonstrate that it has reported publicly on the participation and performance of children with disabilities in regular and alternate assessments as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139.

III. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions, if at any time prior to the expiration of the grant year, DCPS provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above.

IV. Method of Requesting Reconsideration

DCPS can write to Robert H. Pasternack, the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), if it wishes the Department to reconsider any aspect of these Special Conditions. Any request of this sort should describe in detail the changes to the Special Conditions sought by DCPS and the reasons for those requested changes. The Special Conditions should be appended to all copies of your eligibility documents that you maintain, distribute, and make available to the public.

V. Submission of Reports

Reports must be submitted, in accordance with the time lines included in this enclosure, to:

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